IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.557 OF 2005

Ibrahim Hasan Mhaskar & Ors. .. Appellants

Versus

Abbas Mohamad Solkar .. Respondent

Mr.S.M.Kazi for appellants

CORAM : P.V.KAKADE, J.

DATE : 8TH AUGUST, 2005.

P.C.:

1. This is an appeal preferred by the appellants against the judgment and order passed by Addl. District Judge, Ratnagiri dated 27.8.2004 dismissing the appeal and confirming the judgment and order passed by Civil Judge, Junior Division, Rajapur decreeing the suit for perpetual injunction and consequential reliefs.

2. I have heard the learned counsel for the

appellant. Perused the record.

3. The plaintiffs had filed the suit for perpetual injunction, damages and alternatively for possession of the suit property against the defendants submitting that the plaintiff no.1 owned and possessed the suit property, which was gifted to him by defendant no.2 by registered Gift deed dated 12.9.1990. The defendants contested the suit on various grounds, inter alia, submitting that no such Gift Deed was submitted and it was executed by fraud.

. The learned trial judge adjudicated the dispute on merits and came to the conclusion that the plaintiffs had proved that they were owners and in possession of the suit property and defendants had obstructed their possession and hence the suit came to be decreed for perpetual injunction. The appeal was carried to the District Court. The learned Addl.District Judge adjudicated the appeal on the basis of available evidence and came to the conclusion that the findings recorded by the trial court were legal and proper and dismissed the Appeal. Hence the present appeal.

4. At the outset, it must be noted that there is absolutely no substantial question of law involved in this appeal. The only issue involved is the factum of possession of the suit property on the date of the suit, which aspect is properly dealt with by both the courts below on the basis of available evidence including the registered Gift Deed. The defendants have tried to establish that the Gift deed was obtained by fraud, however, there is absolutely no evidence to rebut the presumption raised by document of registered Gift Deed and on that basis, along with other evidence, both the courts below have come to the conclusion that the plaintiffs' suit deserve to be decreed.

5. I do not see any merit in the appeal and therefore, appeal stands dismissed. Consequently Civil Application No.988 of 2005 also stands dismissed.